

**EXHIBIT D**

**LAND USE COVENANT RECORDED FOR THIS SITE**

## LAND USE COVENANT

This is an environmental covenant executed pursuant to the Voluntary Remediation and Redevelopment Act, W. Va. Code § 22-22-1, et seq., and the Uniform Environmental Covenants Act, W. Va. Code § 22-22B-1, et seq., to restrict the activities on and uses of the following described property (a plat of which is also attached hereto and incorporated herein by reference as Figure 1) (hereinafter "the Property"):

Certain property located at 1015 Barlow Drive in Charleston, Kanawha County, West Virginia, and more particularly described in a deed of record (Deed Book 2867, Page 0867) in the office of the Clerk of the County Commission of Kanawha County, West Virginia. The property is depicted on Tax Map 44, District 15, and includes tax parcels 30, 31, 32, and 33.

Activities on and uses of the above-described property that may result in excessive human exposure or in the release of a contaminant that was contained as part of the remedial action related to this covenant are prohibited. Those activities include, but are not limited to:

1. Use of the property for any purpose other than as nonresidential property as defined by the West Virginia Voluntary Remediation and Redevelopment Act, W. Va. Code § 22-22-2(q).
2. Extraction of groundwater at the site for any use except for groundwater monitoring and/or remediation.
3. Excavation, drilling or penetration, unless such excavation, drilling or penetration is conducted by a contractor who is qualified and knowledgeable about releases and exposures to contaminants known to exist at the site. The contractor will be required to perform the work in accordance with a site-specific Health and Safety Plan and a Soil Management Plan developed by a Licensed Remediation Specialist or similarly qualified individual. The contractor will also be required to remediate the disturbed area in a manner that assures that an equivalent amount of engineering control of the site is achieved after the work. The Owner shall provide written notice to the Secretary of the Department of Environmental Protection of any intent to conduct such work.
4. Construction of buildings with sub-slab vapor barriers and/or ventilation system adequate to prevent exposure to vapors in soil and groundwater, as determined by a Licensed Remediation Specialist or similarly qualified individual. Alternatively, the restriction area may be further evaluated for the vapor intrusion pathway to establish whether mitigation is necessary to protect human health, as determined by a Licensed Remediation Specialist or similarly qualified individual.
5. Construction of buildings or other structures within the "Excavated Slope Area" (Excavation Area 4 on Figure 1) without prior geotechnical evaluation of impacts to the stability of the slope.

DEED 2995 73  
Recorded In Above Book and Page  
03/14/2018 08:45:01 AM  
Vera J. McCormick  
County Clerk  
Kanawha County, WV  
Deed Tax 0.00  
Recording Fee 12.00  
TOTAL 12.00

Applicant: Freedom Industries, Inc.  
VRP Project #:15017

The current owner of record of the Property and the contact information of the Property's holder are:

Freedom Industries, Inc.  
c/o Robert L. Johns, Esquire  
Spill Claim Plan Administrator for Freedom Industries  
TURNER & JOHNS, PLLC  
216 Brooks Street, Suite 200  
Charleston, West Virginia 25301

Mr. Johns has the authority to hold and manage the property that is the subject of this Land Use Covenant pursuant to the *Order Confirming the Plan of Liquidation* entered by the United States Bankruptcy Court for the Southern District of West Virginia in Case No. 14-20017 on October 6, 2015. Upon his sale of the Property, the purchaser of the Property will become subject to this Land Use Covenant pursuant to W. Va. Code § 22-22B-5.

The facts regarding the remediation response project at the Property are as follows:

The site began operation in 1938 as a petroleum bulk storage facility and continued in that capacity until 2001, when the site became a bulk storage facility for chemical products, primarily for the mining industry. On January 9, 2014, a release occurred from an aboveground storage tank that contained a blend of 4-methyl-1-cyclohexanemethanol (MCHM), propylene glycol phenyl ether (PPH), and water. The released material eventually reached the adjacent Elk River and the water supply intake for the public water utility.

Environmental assessment of the site determined that contaminants of concern included petroleum-related compounds remaining from the use of the site as a petroleum bulk storage facility, and MCHM and PPH from use as a bulk storage facility for chemical products. Remedial action included the removal and off-site disposal of materials impacted by the release of MCHM/PPH. Excavated materials were either stockpiled or loaded directly onto trucks for transport to the Charleston City Landfill for disposal as non-hazardous waste. General fill was placed in the excavated areas and covered by six inches of vegetative cover (topsoil). Lime, fertilizer, and seed were applied to the disturbed areas of the site, which was then covered by straw mulch. Woven straw mesh erosion control mat was placed on all slopes.

Following excavation of the impacted soil, samples were obtained from the base and sidewalls of the excavated areas, which were analyzed to evaluate the concentrations of MCHM/PPH remaining. Analytical data from those soil samples, as well as analytical data from areas outside the remediated area, were evaluated for potential human health or ecological impacts. All available data from soil (both surface and subsurface), groundwater, surface water, and sediment were evaluated. Data representing concentrations of all site-related contaminants of potential concern, including petroleum-related compounds, were screened against relevant human health and ecological benchmarks and uniform standards developed for MCHM and PPH.

Affected environmental media evaluated for human health and ecological risk include surface and subsurface soil, sediment, groundwater, and surface water. Potential receptors evaluated included

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Current/Future On-Site Trespasser, Future On-Site Facility Worker, Future On-Site Indoor Worker, Future On-Site Construction/Utility Worker, Current/Future Off-Site Recreational User, and Aquatic Biota. The risk evaluation concluded that all potential risks can be appropriately controlled by restricting future use of the Property to nonresidential use, prohibiting groundwater withdrawal except for testing or remediation, requiring the installation of vapor barriers beneath any future buildings, and controlling excavation of soil at the site.

The owner(s) of the Property shall provide written notice to the Secretary of the Department of Environmental Protection within ten days following transfer of a specified interest in the Property subject to this Covenant, changes in use of the Property, application for building permits regarding the Property or proposals for any site work affecting the contamination on the Property.

The owner shall conduct inspections of the Property to monitor compliance with this Land Use Covenant at least one time per year and shall submit a signed copy of the inspection monitoring report to the Department of Environmental Protection's Division of Land Restoration within 30 days of the inspection.

This Covenant relieves the applicant and the applicant's successors and assigns from all civil liability to the State as provided in W. Va. Code § 22-22-1, et seq. and shall remain in effect so long as the Property complies with the applicable standards in effect at the time this Covenant was executed.

This Covenant shall not be amended, modified or terminated except by written instrument executed in accordance with the provisions of W. Va. Code § 22-22B-10, by and between the owner at the time of the proposed amendment, modification or termination; the Secretary of the Department of Environmental Protection; and any holders of this Covenant who succeed the Spill Claim Plan Administrator for Freedom Industries, Inc. Within five days of executing an amendment, modification or termination of this Land Use Covenant, the owner shall record the amendment, modification or termination with the Clerk of the County Commission of Kanawha County, and within five days thereafter, the owner shall provide a true copy of the recorded amendment, modification or termination to the Secretary of the Department of Environmental Protection.

The administrative record for the environmental response project reflected in this covenant is maintained at the Department of Environmental Protection's Division of Land Restoration in the Office of Environmental Remediation and is entitled Voluntary Remediation Project No. 15017, Freedom Industries, Inc.

The Department of Environmental Protection is granted full right of access to the Property for the purpose of implementing or enforcing this Land Use Covenant.

All restrictions and other requirements described in this Land Use Covenant shall run with the land and shall be binding upon all holders who succeed the Spill Claim Plan Administrator and their grantees, lessees, authorized agents, employees or persons acting under their direction or control.

Applicant: Freedom Industries, Inc.  
VRP Project #:15017

IN WITNESS WHEREOF, the following have executed this Land Use Covenant on the dates indicated:

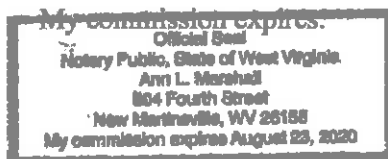
Freedom Industries, Inc. by:

Printed Name: Robert L. Johns, Esquire  
Title: Spill Claim Plan Administrator for Freedom Industries, Inc.

[Signature] 3-1-2018  
Signature Date

State of West Virginia  
County of Kanawha, to-wit:

Taken, sworn, and subscribed before me, a Notary Public in and for the County and State aforesaid this 1<sup>st</sup> day of ~~February~~ March 2018.



Ann L. Marshall  
NOTARY PUBLIC

Department of Environmental Protection by:

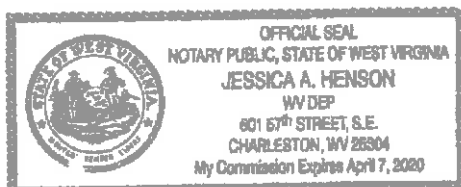
Printed Name: Robert Rice  
Title: Director, Division of Land Restoration

[Signature] 3-9-18  
Signature Date

State of West Virginia  
County of Kanawha, to-wit:

Taken, sworn, and subscribed before me, a Notary Public in and for the County and State aforesaid this 9<sup>th</sup> day of ~~February~~ March 2018.

My commission expires: April 7, 2020



Jessica A. Henson  
NOTARY PUBLIC

Applicant: Freedom Industries, Inc.  
VRP Project #:15017

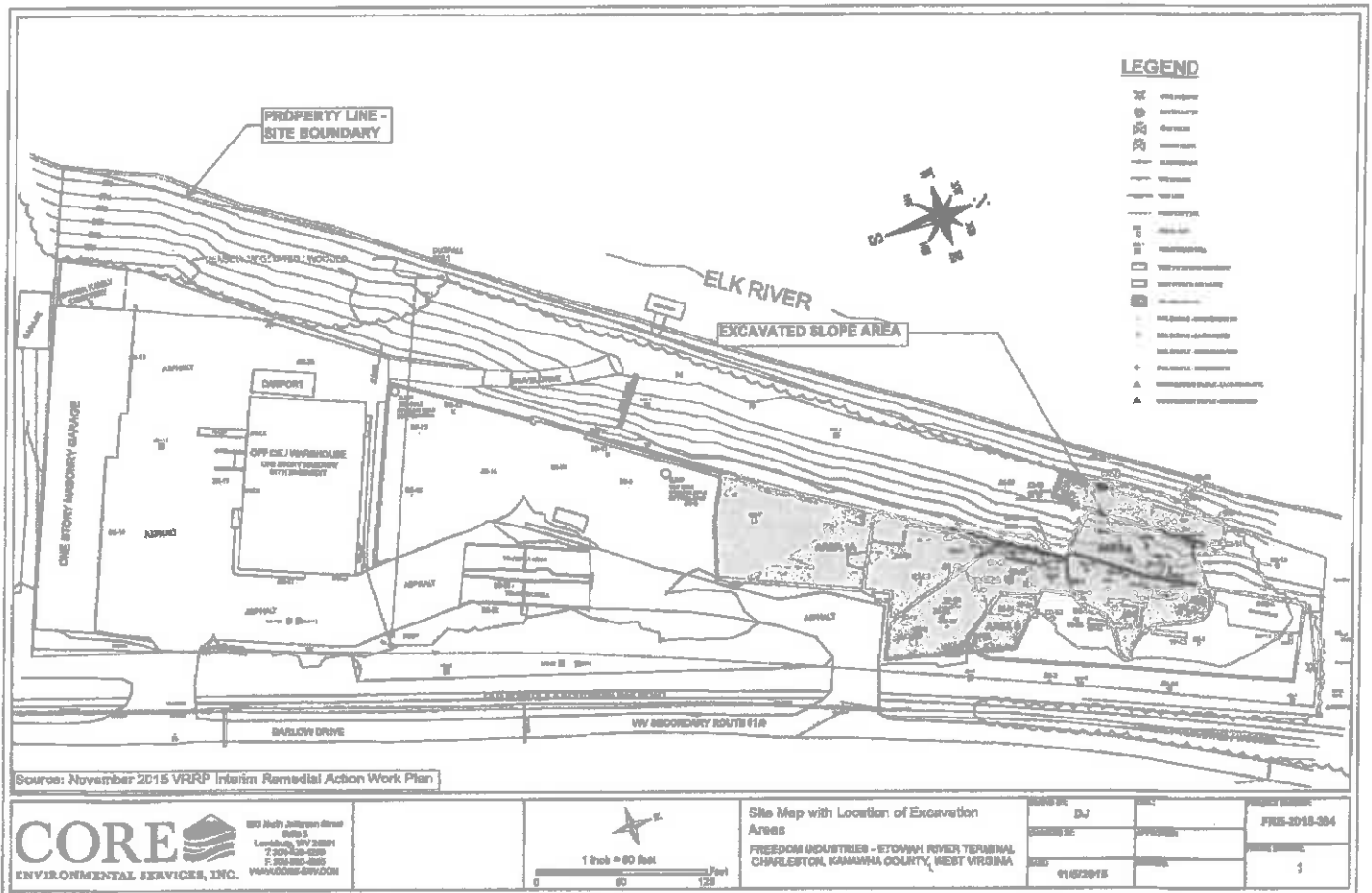
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The Clerk will return the recorded document to:  
Robert Rice, Director  
Division of Land Restoration  
Department of Environmental Protection  
601 57th Street, Southeast  
Charleston, West Virginia 25304

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This instrument was presented to the Clerk of the County  
Commission of Kanawha County, West Virginia, on  
and the same is admitted to record.

Teste: Dana J. McComick Clerk  
MAR 14 2018  
Kanawha County Commission



This instrument prepared by:

Jon C. Frame, Esq.  
Associate Counsel  
Office of Legal Services  
West Virginia Department of  
Environmental Protection  
601 57th Street SE  
Charleston, WV 25304

RELEAS 1301 680  
Recorded In Above Book and Page  
03/14/2018 08:44:19 AM  
Vera J. McCormick  
County Clerk  
Kanawha County, WV  
Deed Tax 0.00  
Recording Fee 11.00  
TOTAL 11.00

## **TERMINATION AND RELEASE OF LAND USE COVENANT**

**THIS TERMINATION AND RELEASE OF LAND USE COVENANT**, made this 1<sup>ST</sup> day of March, 2018, between the West Virginia Department of Environmental, having an address of 601 57th Street SE, Charleston, West Virginia, 25304 (hereinafter "WVDEP"); and Freedom Industries, Inc. acting by and through Robert L. Johns, the Spill Plan Administrator pursuant to the Order Confirming Plan of Liquidation entered by the United States Bankruptcy Court for the Southern District of West Virginia in Case No. 14-20017 on October 6, 2015, which Order also gave him the authority to hold and manage the property that is the subject of this Land Use Covenant (hereinafter "Holder"), for the express purpose of terminating and forever releasing and discharging the Land Use Covenant (as hereinafter defined).

### **RECITALS:**

WHEREAS, Holder has legal authority to hold and manage certain property located at 1015 Barlow Drive in Charleston, Kanawha County, West Virginia, and more particularly described in a deed of record (Deed Book 2867, Page Number 0867) in the office of the Clerk of the County Commission of Kanawha County, West Virginia (hereinafter "Property"). The Property is depicted on Tax Map 44, District 15, and includes tax parcels 30, 31, 32, and 33.

WHEREAS, Holder's predecessor in title to the Property recorded a Land Use Covenant on December 7, 2004, in Deed Book 2618, Page Number 804, a copy of which is attached hereto.

WHEREAS, WVDEP and Holder now desire to terminate the Land Use Covenant recorded on December 7, 2004, as referenced above.

WHEREAS, WVDEP and Holder have agreed to consent and allow the termination, release, and discharge of the Land Use Covenant, as referenced above, in accordance with the Uniform Environmental Covenants Act, as codified in W. Va. Code § 22-22B-10.

NOW, THEREFORE, WVDEP and Holder, intending to be legally bound, do hereby agree that effective as of the date hereof, the Land Use Covenant recorded on December 7, 2004, is hereby terminated, released, and discharged in its entirety; shall be of no further force or effect; and no longer a burden or encumbrance on title to the Property.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]



IN WITNESS WHEREOF the above, the parties hereto have caused their names to be signed hereto as of the day and year hereinafter written.

  
Robert L. Johns, Spill Plan Administrator  
Freedom Industries, Inc.

State of West Virginia  
County of Kanawha, to-wit:


I, the undersigned Notary Public do certify that Robert L. Johns, who signed the foregoing TERMINATION AND RELEASE OF LAND USE COVENANT bearing the date of the 1st day of March 2018, has this day acknowledged the same before me in my said County.

Given under my hand this the 1<sup>st</sup> day of March, 2018.

My commission expires:

August 23, 2020

Official Seal  
Notary Public, State of West Virginia  
Ann L. Marshall  
804 Fourth Street  
New Martinsville, WV 26105  
My commission expires August 23, 2020

  
Robert Rice, Director  
Division of Land Restoration,  
West Virginia Department of  
Environmental Protection

  
NOTARY PUBLIC

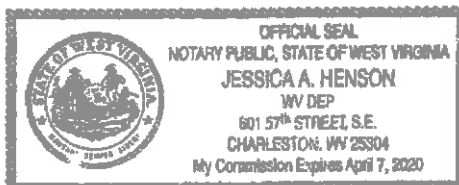
State of West Virginia  
County of Kanawha, to-wit:

I, the undersigned Notary Public do certify that Robert Rice, who signed the foregoing TERMINATION AND RELEASE OF LAND USE COVENANT bearing the date of the 1<sup>st</sup> day of March, 2018, has this day acknowledged the same before me in my said County.

Given under my hand this the 9<sup>th</sup> day of March, 2018.

My commission expires:

April 7, 2020



  
NOTARY PUBLIC

This instrument was presented to the Clerk of the County Commission of Kanawha County, West Virginia, on and the same is admitted to record.

MAR 14 2018

Teste:  Clerk

Kanawha County Commission